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Remarks:

*Regarding the objections to the abstract:*

The foregoing amended abstract is believed to fully address and overcome the Examiner's objections.

*Regarding the rejection of claims 1-3, 9-, 10, 13, 15, 16 and 18 under 35 USC 102(b) in view of US 2251734 to Fuld (hereinafter simply "Fuld"):*

The applicant traverses the instant rejection in view of the Fuld document.

Prior to discussing the Examiner's basis for lodging the rejection under 35 USC 102(b), the applicant points out that unpatentability based on "anticipation" type rejection under 35 USC 102(b) requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) ("lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee"). Anticipation requires that a single reference describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art. See, *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

In view of the amended claims presented herein, particularly as now prior claim 1 has been amended to include the limitations of prior claim 4 which the Examiner had indicated as being directed to patentable subject matter, the applicant believes that such amendment has rendered the Examiner's rejection over the Fuld reference a moot.

*Regarding the rejection of claims 1, 4-12, 14 and 18 under 35 USC 102(b) in view of US 3316559 to Ewing (hereinafter simply "Ewing"):*

The applicant traverses the instant rejection in view of the Ewing reference, as a close reading of the Ewing reference quickly reveals that Ewing does not provide a device which has a siphon.

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As is evident from the Ewing reference, beginning at col. 4, lines through col. 5, line 1 through line 7 reproduced here for sake of convenient reference.

Interposed in the path of fluid entering the dip tube at 20a and exiting from the nozzle 17 is a check valve generally designated 40 (see FIG. 4). For this purpose, a tapered bushing 41 is pre-fitted within the discharge end 60 20b of the dip tube 20. The bushing 41 includes a tapered or shouldered portion as at 41a which serves as an annular seat for the ball valve element 42. The ball valve element 42 is urged against the seat by virtue of a compression spring 43 positioned in the wider portion of the bushing 41. Supporting the lower end of the bushing 41 65 and confining the compression spring 43 is an adapter 44 equipped with a cup-shaped upper portion 44a and a constricted lower portion 44b.

The valve arrangement is advantageous in that it holds 70 liquid within the dip tube 20, allowing instantaneous spraying and it keeps the dispensing device 15 from leaking due to siphon action which is set up, since the bottom of the dip tube 20a is below the height of the nozzle 17 (see FIGS. 2 and 3). Further, we find it advantageous 75 to make the main length of the liquid discharge path, i.e.,

Ewing clearly discloses that his device necessarily includes an intermediate check-valve in his fluid "dip tube" which is necessarily present in order to provide an improved spray as Ewing takes pains to discuss at col. 5, lines 28 - 37, reproduced here.

We have found that squeeze bottle operation develops a superior spray if liquid is held in the dip tube practically right at the discharge orifice. In squeezing a squeeze bottle, a good deal of air and compression escapes and is lost before the liquid is pumped up the dip tube and atomized. This disadvantage is avoided through the introduction of a valve as at 40, so that there is not only a better and quicker spray, but it also permits making a squeeze 30 bottle of substantially greater height and still productive of a spraying action. 35

It is clear then from the foregoing that although Ewing's dip tube is "U-shaped" it necessarily requires a check valve intermediate its ends, which would cease any siphoning benefit. Ewing also expressly notes that his device operates by compressing the liquid contents of this device, which is required generate pressure to both open the check valve and to provide an effective spray pattern.

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Thus, it is the applicant's contention that Ewing fails to include any siphon element, and thus cannot be properly held as anticipating the currently claimed invention. Accordingly reconsideration of the instant rejection in view of the Ewing document, and its withdrawal, is solicited.

*Regarding the rejection of claim 17 under 35 USC 103(a) over Fuld in view of US 2004/0049839 to MoodyCliffe:*

The applicant traverses the instant rejection in view of the combined Fuld and MoodyCliffe documents.

Prior to discussing the relative merits of the Examiner's rejection of claim 17, the applicant respectfully reminds the Examiner that the Federal Circuit has established clear guidelines that the claimed invention must be viewed 'as a whole' in lodging and maintaining a rejection under 35 USC 103. In *Princeton Biochemicals Inc. v. Beckman Coulter Inc.*, 75 USPQ2d 1051 (CAFC 2005) the Court of Appeals for the Federal Circuit expounded that:

"[...] section 103 requires assessment of the invention as a whole. *Id.* This "as a whole" assessment of the invention requires a showing that an artisan of ordinary skill in the art at the time of invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would have selected the various elements from the prior art and combined them in the claimed manner. *Id.* In other words, section 103 requires some suggestion or motivation, before the invention itself, to make the new combination. See *In re Rouffet*, 149 F.3d 1350, 1355-56 [47 USPQ2d 1453] (Fed. Cir. 1998) "

Additionally, with respect to rejections lodged under 35 USC 103(a), the Examiner is reminded that there must be some suggestion, teaching, or motivation arising from what the prior art would have taught a person of ordinary skill in the field of the invention to make the proposed changes to the reference. In *re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). It must also be shown that one having ordinary skill in the art would reasonably have expected any proposed changes to a prior art reference would have been successful. *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1207,

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18 USPQ2d 1016, 1022 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988); *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976). "Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988). With regard to such a suggestion the Courts have also clearly stated it is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher." *W.L. Gore*, 721 F.2d at 1553. Only by insisting upon this rigor can the court avoid entry into the "tempting but forbidden zone of hindsight," *Loctite Corp. v. Ultraseal Ltd.*, 781 F.2d 861, 873 [228 USPQ 90] (Fed. Cir. 1985) But see also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007).

Returning now to the outstanding rejection, the applicant first points out that it is believe that the outstanding rejection should be vacated in light of the currently amended claim 1, which is believed to be allowable over the prior art. Thus, claim 17 which is dependent from claim 1 is believe to be *de facto*, also allowable over the prior art of record.

Alternately the applicant points out that it appears that the true and correct teaching of the MoodyCliffe document is one which is actually rather circumscribed to be directed by the stated "discovery" of MoodyCliffe which states first at page 1

[0012] The present inventors have discovered that, by substantially increasing the viscosity of the liquid composition, these undesirable effects can be reduced substantially, or even eliminated.

and then later elucidates again at page 1

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[0013] Thus, in accordance with the present invention, there is provided a lavatory freshening and/or cleaning system comprising a dispenser for dispensing a liquid composition from under the rim of a lavatory bowl, said liquid composition having a viscosity greater than 2 500 mPa s.

[0014] The viscosity is preferably less than 6 000 mPa s and more preferably within the range 3 000 to 5 000 mPa s. The most preferred value is about 3 500 mPa s.

and indeed MoodyCliffe only demonstrates that a liquid composition having a viscosity of 3500 mPa s was produced, in an apparent sole example composition. However, MoodyCliffe very clearly omits any demonstration of the fluid flow properties or characteristics of his example composition any specific apparatus or device. Thus, it is quite unclear that a skilled artisan would consider MoodyCliffe's compositions to be useful, especially those as being in MoodyCliffe's preferred viscosity range of 3000 – 5000 mPa s in any type of a device which would use a capillary or siphon as a fluid delivery means. Moody's sole suggestion of a liquid type lavatory dispensing device is that disclosed in WO 99/66139, which includes a pad or a plate having capillary channels along which pad or plate MoodyCliffe's liquid compositions of "substantially increased" viscosity may flow. Such a broad, flat plate or pad does not suggest a fluid flow conduit however. In view of at least these features, MoodyCliffe's purported teachings appear to be inapplicable as proper support of the present rejection lodged by the Examiner.

Applicant points out that MoodyCliffe's liquid compositions of "substantially increased" viscosity are at best, suggested as being flowable across a broad, flat plate or pad of a liquid type lavatory dispensing device is that disclosed in WO 99/66139, which however does not suggest that MoodyCliffe's liquid compositions would be useful in a fluid flow conduit, or would be flowable under a syphonic effect. Thus absent a specific demonstration that MoodyCliffe's liquid compositions would be flowable under a syphonic effect is an overextension of what MoodyCliffe actually demonstrates, which is

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not flow under a syphonic effect. To achieve such a flow effect in a thickened liquid may be said to be surprising, as such would be counterintuitive to a skilled artisan.

Second, the applicant notes that MoodyCliffe's ostensibly useful compositions would be those limited to a viscosity range of 3000 – 5000 mP s, which appears to be several times more viscous than the two compositions demonstrated by the present applicant at para. [0077] and [0078] of their published application, US 2007/0204387 A1. Said demonstrated compositions exhibit viscosities of 889 mP s, and 117 mP s, which are quite a bit below the lower threshold viscosity of 3000 mP s required by MoodyCliffe.

In view of the foregoing then, it is believed that the subject matter of claim 17 is unobvious over the prior art combined Fuld and MoodyCliffe references, and that the rejection under 35 USC 103(a) is properly withdrawn.

Accordingly, reconsideration of the propriety of the outstanding rejection of the specification, and of all of the claims is requested.

#### **CONDITIONAL AUTHORIZATION FOR FEES**

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

#### **PETITION FOR A ONE-MONTH EXTENSION OF TIME**

The applicants respectfully petition for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

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Respectfully Submitted;

  
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30 Dec. 2007  
Date:

**CERTIFICATION OF TELEFAX TRANSMISSION:**

I hereby certify that this paper and any indicated enclosures thereo is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571-273-8300 on the date shown below:

  
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Andrew N. Parfomak

30 Dec 2007  
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